IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

CRP.No. 800 of 2002

AGAINST THE ORDER IN EP.647/85 IN OS.632/1969 OF PRL.MUNSIFF COURT, ERNAKULAM.

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REVN. PETITIONERS/ RESPONDENTS/JUDGEMENT DEBTORS 4 TO 6 IN S.A. NO. 710/89:

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1. **KUNJUKURUMBA, W/O. AZHAKAN VALLON, MANDOTHIPARAMBIL, TRIKKAKARA SOUTH PAKUTHY, THUTHIYOOR KARA (DIED).**

2. **DEVAKI, D/O. KUNJU KURUMBA, MANDOTHIPARAMBIL, TRIKKAKARA SOUTH PAKUTHY, THUTHIYOOR KARA.**

3. **AYYAPPAN, H/O. DEVAKI, MANDOTHIPARAMBIL, TRIKKAKARA SOUTH PAKUTHY, THUTHIYOOR KARA.**

BY ADV. SRI.T.I.DANIEL.

RESPONDENTS/ PETITIONERS/ DECREE HOLDERS 1 TO 10 AND RESPONDENTS/ JUDGEMENT DEBTORS 1 TO 3 IN E.A. NO. 710/89:

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1. **VASUDEVAN NAMBOOTHIRI, S/O. PARAMESWARAN NAMBOOTHIRI, ALIYAKKATTU ILLAM, TRIKKAKARA SOUTH PAKUTHY, THUTHIYOOR KARA.**

2. **DEVAKI ANTHARJANAM, W/O. VASUDEVAN NAMBOOTHIRI, ALIYAKKATTU ILLAM, TRIKKAKARA SOUTH PAKUTHY, THUTHIYOOR KARA.**

3. **PARAMESWARAN NAMBOOTHIRI, S/O. VASUDEVAN NAMBOOTHIRI,ALIYAKKATTU ILLAM, THRIKKAKARA SOUTH PAKUTHY, THUTHIYOOR KARA.**

C.R.P. NO. 800/2002:

4. ARYA ANTHARJANAM, D/O. VASUDEVAN NAMBOOTHIRI,
ALIYAKKATTU ILLAM,
TRIKKAKARA SOUTH PAKUTHY, THUTHIYOOR KARA.

5. NARAYANAN NAMBOOTHIRI @ SANKARANARAYANAN,
S/O. VASUDEVAN NAMBOOTHIRI, ALIYAKKATTU ILLAM,
TRIKKAKARA SOUTH PAKUTHY, THUTHIYOOR KARA.

6. VASUDEVAN NAMBOOTHIRI, S/O. VASUDEVAN NAMBOOTHIRI,
ALIYAKKATTU ILLAM,
TRIKKAKARA SOUTH PAKUTHY, THUTHIYOOR KARA.

7. KRISHNAN NAMBOOTHIRI, S/O. VASUDEVAN NAMBOOTHIRI,
ALIYAKKATTU ILLAM, TRIKKAKARA
SOUTH PAKUTHY, THUTHIYOOR KARA.

8. KUMARAN NAMBOOTHIRI, S/O. VASUDEVAN NAMBOOTHIRI,
ALIYAKKATTU ILLAM,
TRIKKAKARA SOUTH PAKUTHY, THUTHIYOOR KARA.

9. NARAYANAN NAMBOOTHIRI,
S/O. VASUDEVAN NAMBOOTHIRI, ALIYAKKATTU ILLAM,
TRIKKAKARA SOUTH PAKUTHY, THUTHIYOOR KARA.

10. ARYA ANTHARJANAM, MOTHER OF VASUDEVAN NAMBOOTHI,
W/O. PARAMASWARAN NAMBOOTHRI
ALIYAKKATTU ILLAM, TRIKKAKARA SOUTH PAKUTHY,
THUTHIYOOR KARA.

11. VALSALAN, S/O. ARAKKAPARAMBIL KRISHNAN
KAPPATTUKAVU, EROOR DESOM, NADMA VILLAGE.

12. MADHAVI, W/O. KUMARAN, D/O. KRISHNAN,
ORAVANTHURUTHU VEETTIL, KALADI VILLAGE,
KALADI KARA.

13. RUGMINI, W/O. KODHUNARAYANAN,
D/O. KRISHNAN, VALLOPPILLIL PARAMBIL,
EROOR DESOM, NADAMA VILLAGE.

BY ADV. SRI.K.V.JAYACHANDRAN,
ADV. SRI.RAJU V.MATHEW,
ADV. SMT.K.B.SMITHA.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26/10/2007,ALONG WITH C.R.P NO. 296/2005,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON C.M.P. NO. 2106/2002 IN C.R.P. NO. 800/2002-F

DISMISSED

26/10/2007. **SD/- M.N.KRISHNAN, JUDGE.**

//TRUE COPY//

prv.

M.N.KRISHNAN, J

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C.R.P. Nos.800/2002 & 296/2005

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Dated this the 26th day of October 2007

ORDER

C.R.P.No.800 of 2002 is preferred against the order of the Principal, Munsiff, Ernakulam in E.A.No.710 of 1989 in E.P.No.647 of 1985 in O.S.No.632 of 1969. The execution petition was filed for effecting delivery of the property of 95 cents comprised in Sy.No.199/5B of Thrikkakara Village. When the Amin went to effect delivery of the property there was obstruction by the respondents in the E.P. and thereafter the decree holders moved an application for removal of obstruction as E.A.No.556/1989. When it was being considered, it was submitted that the obstructors do not claim any right over the property in Sy.No.199/5B. But, according to them, the property sought to be delivered takes in Sy.No.199/5A which is their property and therefore it was decided that the properties comprised in Sy.No.199/5B can be delivered to the decree holders. Now the dispute centers around a land having an extent of 1.502 cents with a building therein. The crucial question to be decided is whether this 1.502 cents forms part of Sy.No.199/5A or 199/5B. If it is found that it forms part of

Sy.No.199/5B then alone the decree holders will be entitled to get delivery of that property.

2. A Commissioner was appointed. He had submitted a plan and report. But, unfortunately, a perusal of the order would reveal that the court has not considered the objections raised therein and the court has not examined any parties to arrive at a decision on the point precisely.

3. Therefore, I feel that the order requires interference. If the materials can be furnished by the parties without further deputation of a Commissioner and if the court finds it as acceptable after evidence, the court may proceed to decide it after hearing both sides and arrive at a precise finding whether the disputed property of 1.502 cents is comprised in Sy.No.199/5A or 199/5B. If it is in Sy.No.199/5B relief may be granted to the decree holders. In case the court, after examination of the parties or evidence adduced, feels that the materials are insufficient to arrive at that point precisely and as I am told that the previous Commissioner, who inspected the property is no more, then the court has to depute an experienced senior Commissioner to identify the property with respect to survey number alone that whether it is in Sy.No.199/5A or in 199/5B and after hearing both sides, dispose of the matter in accordance with law. For this purpose the order under challenge in this C.R.P. is set aside. Since this

decision will have a directing bearing, I set aside the order in C.R.P.No.296/2005 also and remit back the same to the court for fresh consideration and disposal by permitting both parties to adduce evidence.

Parties are directed to appear before the court below on 26.11.2007. Being a suit of 1969, the court shall show anxiety and with the co-operation of the parties and try to dispose of the matter within 3 months from today.

C.R.Ps. are disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-